IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9417 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHULIBEN W/O LAXMANSINH DABHI

Versus

TAKHATSINH PRABHATSINH SODHA PARMAR

Appearance:

1. Criminal Misc.Application No. 9417 of 2003

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR VIREN G DAVE for Respondent No. 1-2

MR KC SHAH, Ld. APP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 16/12/2003

ORAL JUDGEMENT

1. Rule. Mr.Viren G. Dave, learned Counsel for Opponents No.1 and 2 and Mr.K.C. Shah, learned APP for respondent No.3 waive service of notice of rule.

2. The present petition is preferred by the Original Complainant, who is the mother of the deceased wife for the offence under Section 498(a), 306 and 114 of IPC.

3. The short facts of the case appears to be that Kesarben, who is the daughter of the complainant, has committed suicide and the complaint is filed on the accusation that there was cruelty and harassment by the husband, mother-in-law, father-in-law, and brother-in-law. The police arrested all the accused and ultimately the bail application was submitted being Criminal Misc. Application No.725/2003 before the Court of Sessions Judge, Nadiad. The learned Sessions Judge as per the order dated 27-10-2003 declined bail to the husband, Lalsinh Takhatsinh, whereas the father-in-law, the mother-in-law and the brother-in-law were granted bail on imposition of only two conditions, one was that the witnesses are not to be tampered with and another is not to leave the limits of Gujarat State without prior permission. It is against the said order qua father-in-law and the brother-in-law the present petition is preferred for cancellation of the bail.

4. Having heard Mr.Anil S. Dave, learned Counsel for the petitioner, Mr.Viren Dave, learned Counsel for Opponents No.1 and 2 and Mr.Shah, learned APP for Opponent No.3, it appears that the learned Sessions Judge has totally lost sight of the important aspects that Uday Sinh Koyabhai is the main witness for the case of the prosecution and the said Uday Sinh is staying at Village Salani. The accused Takhatsinh and Rameshbhai, namely; father-in-law and brother-in-law of the deceased respectively are also staying at Village Salani. The learned Sessions Judge ought to have considered that at least until the charge-sheet is filed, in the serious offence of dowry death, even if the accused are released on bail, the strictest conditions should be imposed with a view to ensure that the investigating machinery can proceed with the investigation in a convenient manner and the witnesses may be able to make statement before the I.O. concerned, in a free and fair atmosphere. Even with a view to ensure that the accused may not run away or is available as and when required, the normal condition would be required for directing to report to

the concerned police station. None of the said aspects are at all taken into consideration by the learned Sessions Judge at the time of releasing the accused on bail.

5. I would have considered the matter further even by discussing the facts of the case and prima facie aspects as to whether it was a case for grant of bail or on the question of requirement of imposition of the condition considering the facts and circumstances of the present case, however, Mr.Dave, learned Counsel appearing for the Opponents No.1 and 2 prayed that the Opponents No.1 and 2 shall abide by any condition which may be found proper by this Court and he is not inviting any reasoned order since any observations, which may be made by this Court, may prejudice the defence at the time of trial and, therefore, in view of the same, I refrain from making any observations on the said aspects and I find it proper not to record any further reasons.

6. In view of the aforesaid, order dated 27-10-2003 passed by the learned Sessions Judge in Criminal Misc. Application No.725/2003 for releasing Opponents No.1 and 2 herein on bail shall continue with further conditions as stated hereinafter:

(a) Opponents No.1 and 2 herein shall report every fortnight to Chaklasi Police Station until the trial is over i.e. on every 1st and 3rd Sundays of the month between 9.00 am and 2.00 pm, until the trial is over;

(b) Opponent No.2 herein shall not enter the local

fixed for recording of the evidence of the witnesses of the prosecution case and he shall continue to abide by the said condition until the trial is completed.

7. The order of the learned Sessions Judge shall stand modified to the aforesaid extent. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly.

16-12-2003 (Jayant Patel, J.)

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